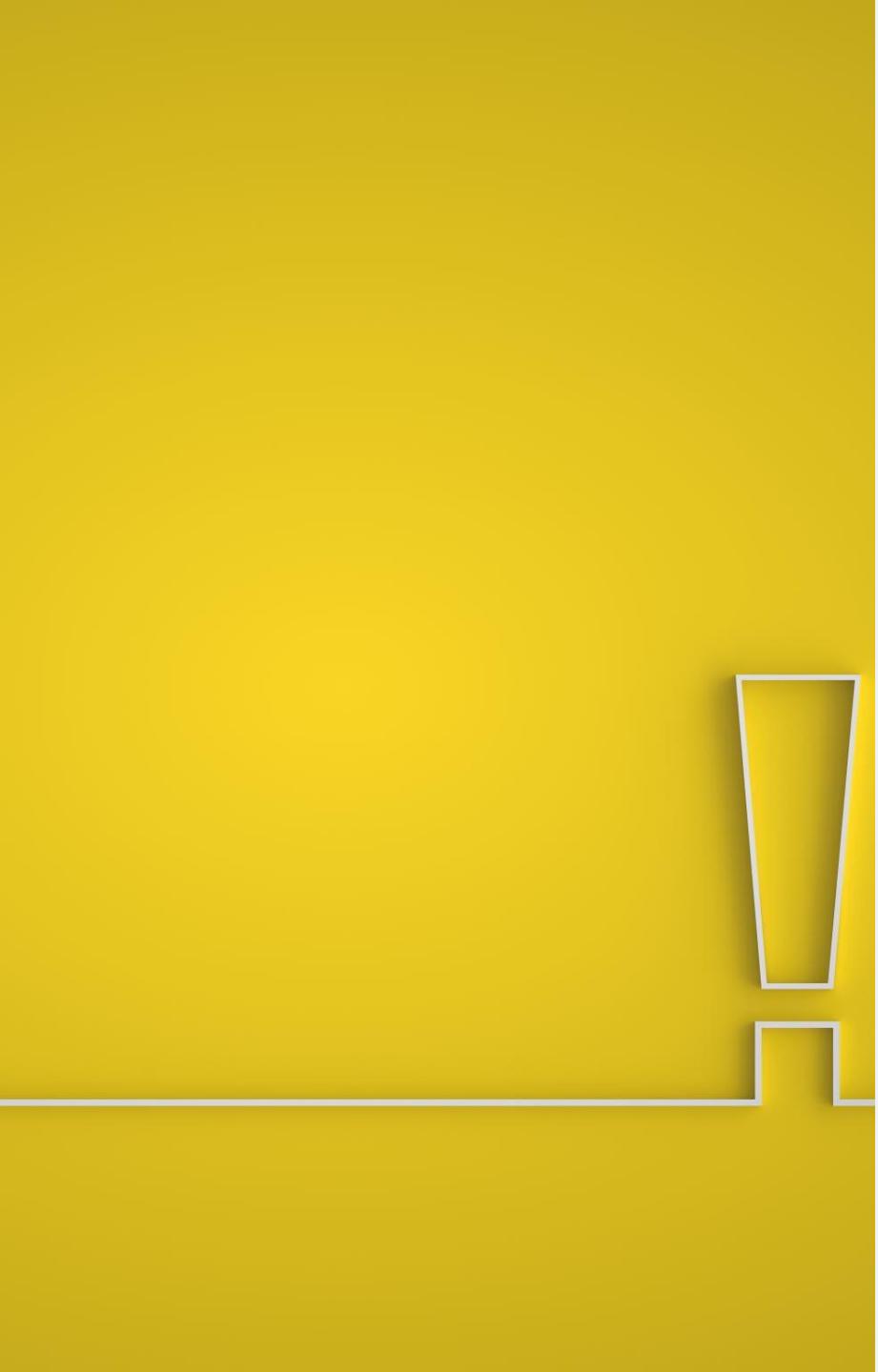


# ARE OUR ADEQUATE PROCEDURES ADEQUATE?

TRUST PRINCIPLES AND S17A MACC ACT

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Section 17A(3) states “

*where an offence is committed by a commercial organisation, a person – (a) who is its director, controller, officer or partner; or (b) who is concerned in the management of its affairs at the time of the commission of the offence, is deemed to have committed that offence unless that person proves that the offence was committed without his consent or connivance and that he exercised due diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his function in that capacity and to the circumstances.”*

# SECTION 17 A (4) MACC ACT

- In the event the company is charged under section 17A MACC Act, subsection (4) of the same section provides that
- *“...it is a defence for the commercial organization to prove that the commercial organization had in place adequate procedures to prevent persons associated with the commercial organization from undertaking such conduct”*. In other words, the corrupt act was committed in spite of such adequate procedures had been established.

# TRUST PRINCIPLES

Taking into account that companies may be in the dark as to what may be considered as “adequate procedures”, a 10-page Ministerial Guidelines on Adequate Procedures was issued in December 2018 to provide some guidance for companies on the elements that the anti-corruption regulator may look for in ascertaining whether adequate procedures are in place.

In the Ministerial Guidelines, there are five (5) principles outlined which are known as the “TRUST Principles”

*(T – top level commitment; R – risk assessment; U – undertake control measures; S – systematic review, monitoring and enforcement; T – training and communication).*



## Top Level Commitment

Provide assurance to internal and external shareholders that the organisation is operating in compliance with its policies and any applicable regulatory requirement.

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## Risk Assessment

Recommended to conduct comprehensive “corruption risk assessment” every 3 years with intermittent assessment when necessary (e.g. change in law or circumstances of the business).

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## Undertake Control Measures

Establish policies and procedures, due diligence process and reporting channel (whistleblowing channel, secure information management system and prohibit retaliation).

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## Systematic Review, Monitoring and Enforcement

Conduct internal or external audits to assess the performance, efficiency and effectiveness of the anti-corruption programme.

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## Training & Communication

Anti-corruption management (including policies, roles and responsibilities) shall be communicated and provided adequate training to ensure thorough understanding by the employee.

# RISKS AND WEAKNESSES

Weaknesses in the organisation's internal procedures and processes could give rise to opportunities for corruption.

1. Weak procurement processes which allow contracting with corrupt third parties;
2. Weak investment processes which result in corrupted decisions, for example where strong conflicts of interest result in overpayment on major acquisitions;
3. Weak credit approval processes which allow loans for unsuitable customers in exchange for gratification;
4. Weak project management processes and procedures which allow a delay in projects and cost overruns;
5. Weakness in detecting repeat Variation Orders (VOs) and other cost escalators;
6. Lack of consequential action for violations of the Code of Conduct which creates indifference towards abiding by the Code;
7. Lack of practicality in actual policies that results in personnel ignoring or overriding them;
8. Weaknesses in the due diligence and conflicts of interest management which creates opportunities for corruption;
9. Weakness in monitoring the action plan particularly when it is self-regulated, e.g. the risk owner not accurately stating or updating the control effectiveness, risk likelihood and impact; and
10. Weakness in establishing fit and proper controls, which allow management overrides.

# WHISTLEBLOWER PROTECTION



- WHISTLEBLOWER PROTECTION ACT
- S17 MACC ACT
- AMMENDMENTS TO INCLUDE RIGHTS OF REPORTING PERSONS AT WORKPLACE
- OTHER REFORMS
  - BENEFICIAL OWNERSHIP
  - POLITICAL FINANCING
  - PUBLIC PROCUREMENT
  - FISCAL TRANSPARENCY ACT

# ENFORCEMENT

- We turn to MACC!!